

IN THE MATTER OF
CUSHING REFINING & GASOLINE COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 2825. Complaint, May 28, 1936—Decision, Feb. 17, 1937

Where a corporation, engaged in the refining of crude petroleum, and in the manufacture therefrom of a portion of the gasoline produced by it by the new "cracking" method or process, and of the balance and greater portion thereof by the straight "distillation" method, and in the sale and distribution of such gasoline, thus variously made, in commerce among the various States and in the District of Columbia to ultimate purchasers or consumers thereof, largely through wholesale dealers, jobbers, and retailers; in substantial competition with individuals and concerns likewise engaged in manufacture, distribution, and sale of gasoline produced by one or both of such methods, and with those also engaged in making type consisting of said product made by any of aforesaid methods, with addition thereto of tetraethyl lead or "ETHYL," to eliminate knock or detonation encountered in high compression motors driven by usual "straight run" or "ordinary" gasoline, refined through the "skimming" or "distillation" process, and added, to some extent, to most of the gasoline now sold in the United States, and resulting in the so-called long and widely used "ETHYL" gasoline, use of which destroys to extent thereof demand for or sale of "straight run" and "cracked" gasoline (some of which latter is sufficiently high in grade, without addition of such tetraethyl lead, to accomplish results similar to that produced by so-called "ETHYL" gasoline); and including among its said competitors those who use both "distillation" and "cracking" processes in manufacture of gasoline sold and distributed by them to consuming public in competition with its own, but without such false and fictitious representations as to the "newness" of their product, or falsely representing all their said product "high test" or "high octane," are superior to all other gasoline, and without unfairly disparaging products of manufacturers who added tetraethyl lead or "Ethyl" to their product to eliminate knock and increase power;—

- (a) Represented, through its advertising in newspapers, periodicals, and other publications of wide circulation among the general public, in aid of the sale of its said gasoline to dealers for ultimate use by consuming public, and to create a demand therefor in preference to the gasoline containing chemicals such as tetraethyl or "Ethyl," not theretofore made or sold by it, that gasoline to which such substance or fluid had been added for the purpose of processing the same was a narcotic, or had narcotic effects, and was "doped-up" and poisonous, and unsafe to users of such motor fuel, and that gasoline thus treated was unsafe for sale to or use by the public as a motor fuel, through such statements as: "Cushing's new gasoline needs no BEWARE signs. It's safe," "You don't want to endanger the life of your customers—you DO when you use a poisonously doped gasoline, but you DON'T when you offer them Cushing's," "Needs no dangerous chemicals"; and

- (b) Represented that all the gasoline produced by it was made by the "cracking" process, and that all of its said gasoline was made by a new process and consisted of "high-test," "high-octane," "anti-knock" gasoline, and that all of its said product was superior as motor fuel to so-called "ETHYL" gasoline, and that "cracking" process product was superior as a motor fuel to gasoline of equal octane value to which tetraethyl or "ETHYL" had been added, through such statements as: "WHAT'S CUSHING GOT THAT'S SO NEW," "Cushing's plant is new * * * We never believed gasoline had to be doped—and we're anti-narcotic now, so rather than sell you an artificially pep'ed-up product we've built a plant that's turning out an un-doped high octane gasoline that's a world beater—," "A NEW AND SAFER ANTI-KNOCK MOTOR FUEL! NOT JUST ANOTHER GASOLINE," "AS NEW AS TODAY'S CARS," "It stands on its own merits and needs no dangerous chemicals * * *";

The facts being that the commonly known "ETHYL" gasoline, which results from treating "straight run" or "ordinary" gasoline as made commercially either by "distillation" or "skimming" method, or by "cracking" method, by adding thereto tetraethyl lead or "ETHYL," is a high-grade, anti-knock product, which functions in an exceedingly high and efficient manner as a gasoline motor fuel, is entirely safe to health of operators thereof and to public in general when used as such, and is not narcotic in effect, or a poisonous dope, or dangerous to life or health of customers, purchasers, users, or general public, and only portion of gasoline produced by it as above set forth was made by "cracking" process, or by its new plant or refinery, or by new addition to old refinery, and balance and greater part of its said gasoline was made by straight distillation, one of the oldest processes known in industry in question;

With effect of misleading retailers and other dealers in gasoline, and substantial portion of purchasing public, into erroneous belief that statements and representations above set forth and indicated were true, and that gasoline treated with such tetraethyl lead or other chemicals to increase its power or eliminate knock, was undesirable, inefficient, doped, harmful, poisonous, and narcotic in its effect, and dangerous to health or life of customers when used for purpose for which gasoline motor fuel is intended; and that all the gasoline made by it was high-test or high-octane, obtained by a new "cracking" process, which was safe and superior to ETHYL gasoline, or that to which tetraethyl lead had been added, or to "straight run" gasoline, and with tendency to induce public to buy gasoline not thus chemically treated, because of such erroneous beliefs thus brought about, and unfairly divert trade to sellers of "straight" or "ordinary" gasoline, and to it and other sellers of "cracked" gasoline, and its customers, from sellers of gasoline treated with tetraethyl lead or "ETHYL"; to the substantial injury of competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Mr. James M. Hammond for the Commission.

Mr. Dudley, Hyde, Duvall & Dudley, of Oklahoma City, Okla., for respondent.

Complaint

24 F. T. C.

COMPLAINT

Pursuant to the provisions of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission, having reason to believe that Cushing Refining & Gasoline Company, a corporation, is using unfair methods of competition in commerce, as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereto would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Cushing Refining & Gasoline Company, is a corporation organized and existing pursuant to the laws of the State of Oklahoma, having its office and principal place of business at Cushing, Okla., with branch offices at Minneapolis, Minn., and refineries at Cushing and Blackwell, Okla. It is now, and for more than one year last past has been, engaged in the business of refining crude petroleum and manufacturing therefrom gasoline, and in the sale of said gasoline in commerce between and among the various States of the United States and in the District of Columbia, shipping such products, when sold, to the purchasers thereof, some located in the State of Oklahoma, and others located in various States of the United States other than the State from which shipment is made and in the District of Columbia. There is now and has been, for more than one year last past, a constant current of trade and commerce by respondent in its aforesaid products.

PAR. 2. Certain other persons, firms, partnerships, and corporations have been, and are now engaged in the manufacture and sale of gasoline in interstate commerce, as described in paragraph 1 hereof, some of which gasoline is refined by what is known in the trade as the "skimming" or "distillation" process, and is called "straight run" or "ordinary" gasoline; others are engaged in the manufacture of gasoline by the "cracking" method, a newer process of refining gasoline which, as a rule, extracts a higher grade of gasoline from crude petroleum than is usually obtained by the "skimming" or "distillation" method. Most refiners use both the "cracking" and "distillation" processes. Others are engaged in manufacturing a certain type of gasoline known as "Ethyl" gasoline, which consists of gasoline made by any of the above methods, to which a chemical known as "tetra-ethyl lead" or "Ethyl" has been added for the purpose of eliminating "knocking" or "detonation" which is encountered in high compression motors when driven by the usual straight run gasoline. Some of the

gasoline manufactured by the "cracking" method is sufficiently high in grade without the addition of tetraethyl lead to accomplish a result similar to that produced by "Ethyl" gasoline. The quality or grade of gasoline in this respect is susceptible of measurement and determination. This standard of measurement is expressed in terms of octane value, and the gasoline having the highest octane rating is considered by the trade, and the purchasing public, to be the best and commands a higher price or premium, accordingly. Tetraethyl lead, or Ethyl fluid, unadulterated, is poisonous, but when used in the very limited quantity necessary or permitted in gasoline, as sold to the public for motor fuel, is entirely safe and no more poisonous or dangerous than any other motor gasoline. Tetraethyl lead or "Ethyl" has been added, to some extent, to most of the gasoline now sold in the United States.

Respondent's refineries at Blackwell and Cushing, Okla., have a daily capacity of approximately 6,200 gallons of straight run gasoline produced by the "distillation" process. In addition to this, its plant at Cushing has a daily capacity of 2,200 gallons produced by the "cracking" process. Respondent's production capacity for "cracked" gasoline is therefore approximately one-third of its capacity for producing "straight run" gasoline by the distillation process.

Respondent does not now, and never has, manufactured or sold gasoline to which tetraethyl lead, or "Ethyl" is, or has been, added.

PAR. 3. In the course and conduct of its business, respondent is now, and for more than one year last past has been, in substantial competition in commerce among and between the various States of the United States and in the District of Columbia, with other corporations, and with partnerships and individuals engaged in manufacturing, distributing, and selling gasoline to which tetraethyl lead, or "Ethyl" has been added, and with other corporations, partnerships, and individuals, who sell only "straight run" or "ordinary" gasoline to which tetraethyl lead or "Ethyl" has not been added, or who sell gasoline produced by the "cracking" process. All of the manufacturers and sellers of the several types of gasoline above described are and have been in competition in commerce as hereinabove set out, between and among themselves, as to each and all of the said types of gasoline.

PAR. 4. In such competition between the sellers of "Ethyl" gasoline and the sellers of gasoline to which no tetraethyl lead or "Ethyl" has been added, one of the controlling influences on the purchasing public, is the popular opinion as to the comparative value, desir-

Complaint

24 F. T. C.

ability, effectiveness and safety of "Ethyl" gasoline, as compared with either "ordinary," "straight run" gasoline or "cracked" gasoline to none of which "Ethyl" has been added.

The use of "Ethyl" gasoline has been widely practiced in the United States for the last ten years, and its desirability and effectiveness in increasing power and eliminating "knock" is well known and understood by the purchasing public, and has been found to be entirely safe when used as motor fuel, the use for which it is intended, and is no more poisonous or dangerous than any other form of gasoline used for that purpose. Notices are placed on all gasoline pumps from which "Ethyl" gasoline is sold, in order that purchasers may be warned not to use it for cleaning or other purposes.

The respondent, as a manufacturer and seller of gasoline which does not contain tetraethyl lead or "Ethyl," is interested in and engaged in presenting to the purchasing public all available reasons or arguments against, or tending to lessen the desirability, effectiveness and safety of gasoline treated with tetraethyl lead or "Ethyl."

The use of the said "Ethyl" gasoline destroys to the extent of the use thereof, the demand for or sale of "straight run" and "cracked" gasoline, such as is manufactured and sold by the respondent, and respondent is therefore interested in an attempt to create public sentiment against or adverse to the use of gasoline containing tetraethyl lead or "Ethyl."

PAR. 5. Respondent distributes its said product to the ultimate purchasers or consumers thereof, largely through wholesale dealers, jobbers and retail merchants. In aid of its sales to such dealers, or ultimate dealers, for ultimate use by the consuming public, and for the purpose of creating a demand on the part of the consuming public for its own products, in preference to gasoline containing chemicals such as tetraethyl or "Ethyl," which it does not manufacture or sell, respondent now causes, and for a long time past, has caused advertisements to be issued, published, and circulated in newspapers, magazines and other publications of wide and general circulation, and in other forms of printed matter, and by radio broadcasting and in other ways, to and among the general public of the United States.

In said ways, and by said means, respondent has made to the general public, unfair, exaggerated, false, and misleading statements, for the purpose and intent, and with the effect of promoting the sale in commerce, as aforesaid, of its own products and for the purpose and effect of unfairly disparaging and discouraging the consumption by the purchasing public of gasoline containing tetraethyl lead or

"Ethyl," which it does not manufacture, produce or sell. These advertisements contain statements, among others, such as the following:

WHAT'S CUSHING GOT THAT'S SO NEW

Cushing's plant is new—it's 1935 from stem to stern. We thought it about time that today's motor fuels caught up with today's motor cars. We never believed gasoline had to be doped—and we're anti-narcotic now, so rather than sell you an artificially pep'ed-up product we've built a plant that's turning out an undoped high octane gasoline that's a world beater—

CUSHING'S A NEW AND SAFER ANTI-KNOCK MOTOR FUEL! NOT JUST ANOTHER GASOLINE.

There's been plenty of new gasoline, and CUSHING'S not making claims we can't deliver—so we've guaranteed our new high octane anti-knock motor fuel, because we know it's pure undoped power. We could have offered you an artificially pep'ed up product—instead we have spent thousands of dollars on a new plant to bring you a gasoline that's as new as today's cars. It stands on its own merits and needs no dangerous chemicals—hence you can offer it to your customers without doubt or fear.

NEW! WE'LL SAY CUSHING'S GASOLINE IS AS NEW AS TODAY'S CARS.

WHAT DO YOU MEAN ANTI-KNOCK! WITH CUSHING'S NEW GASOLINE WE NOT ONLY MEAN IT—WE GUARANTEE IT!

Cushing's new gasoline needs no BEWARE signs. It's safe.

You don't want to endanger the life of your customers—you DO when you use a poisonously doped gasoline, but you DON'T when you offer them Cushing's.

When we saw the handwriting on the wall we might have gone out of the room and mixed up a doped-up gasoline—but we could have hardly put the name CUSHING on such a product, so we have spent thousands of dollars on a new plant to bring you a high octane and anti-knock motor fuel so good we guarantee it.

But that's the only way we know how to give you a gasoline of real performance—not artificially doped-up.

It stands on its own merits, and needs no dangerous chemicals.

PAR. 6. The statements above set forth, together with others of similar import and effect serve as representations by respondent and have the capacity and tendency to mislead and deceive, and have misled and deceived, purchasers and prospective purchasers of gasoline treated with tetraethyl lead or "Ethyl" by leading them to believe:

1. That gasoline other than respondent's is not safe;
2. That gasoline which contains tetraethyl lead or "Ethyl" is not safe;
3. That gasoline to which a chemical has been added for the purpose of eliminating "knock" is dangerous to the life or health of the purchaser or user thereof;
4. That gasoline to which chemicals have been added is poisonous, but that the gasoline of respondent is not;
5. That gasoline to which a chemical has been added to increase its power and to eliminate "knock" is doped, and therefore unsafe for use by the

Complaint

24 F. T. C.

consuming public, whereas the gasoline of the respondent is superior to chemically treated gasoline;

6. That gasoline treated with tetraethyl lead or "Ethyl," which is the only chemical used commercially for admixture with gasoline to eliminate "knock" and to increase its power, is a dangerous dope, a narcotic, and injurious to the life or health of purchasers, users and the general public;

7. That all of respondent's gasoline is made by a new process;

8. That all of respondent's gasoline is made by the "cracking" process;

9. That gasoline made by the "cracking" process is superior to gasoline to which "Ethyl" or tetraethyl lead has been added.

PAR. 7. In truth and in fact, the treatment of "straight run" or "ordinary" gasoline, as manufactured commercially, either by the distillation or skimming method, or by the cracking method, by adding thereto tetraethyl lead or "Ethyl," results in the creation of a high grade anti-knock gasoline, commonly known as "Ethyl" gasoline, which functions in an exceedingly high and efficient manner as fuel for gasoline motors. Said "Ethyl" gasoline is entirely safe to the health of persons operating said motors, and to the public in general, when used as a motor fuel, and is not narcotic in its effect, a poisonous dope, or dangerous to the life or health of a customer, purchaser, user, or the general public.

In truth and in fact only about one-third of the gasoline produced by the respondent is made by the new cracking process, or by its new plant or refinery, or by a new addition to an old refinery, the balance being made by straight distillation, one of the oldest processes known in the petroleum refining industry.

PAR. 8. The aforesaid false, misleading, and unfairly disparaging representations, so made by respondent in its advertising, as above described, have had, and now have, the tendency and capacity to mislead, and have misled and deceived retailers, jobbers, and wholesalers of gasoline and a substantial portion of the purchasing and consuming public, into the false and erroneous belief that said statements and representations, or any of them as set forth in paragraph 5 are true, and that gasoline treated with tetraethyl lead or other chemicals to increase its power or to eliminate "knock," is undesirable, inefficient, doped, harmful, poisonous, narcotic in its effect, and dangerous to the health or life of customers, when used for the purpose for which gasoline motor fuel is intended; and that all of the gasoline manufactured by respondent is high test, or high octane gasoline obtained by a new "cracking" process which is safe and is superior to "Ethyl" gasoline or gasoline to which tetraethyl lead has been added, or to straight run gasoline.

Further, said false and misleading statements and representations have the tendency and capacity to induce the public to purchase

gasoline not so chemically treated, in and because of such erroneous beliefs, brought about as hereinabove set out, and to unfairly divert trade to the sellers of straight or ordinary gasoline and to the sellers of "cracked" gasoline, including the respondent, and its customers, from sellers of gasoline treated with tetraethyl lead or "Ethyl" to increase its efficiency as a motor fuel. As a result thereof, substantial injury has been and is now being done by respondent to competition, in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. Gasoline of sundry competitors of respondent likewise engaged in commerce as herein set out who use both the "distillation" and "cracking" processes in the manufacture of their products, is and has been sold and distributed to the consuming public in the various States of the United States and in the District of Columbia in competition with respondent's gasoline but without such false and fictitious representations as to the "newness" of their product and without falsely representing that all of their gasoline is "high test" or "high octane" or superior to all other gasoline, when such is not the case, and without unfairly disparaging the products of manufacturers of gasoline who add tetraethyl lead or "Ethyl" to their product for the purpose of eliminating "knock" and increasing its power.

PAR. 10. The above and foregoing acts, practices and representations of the respondent, have been, and are, all to the prejudice of the public and respondent's competitors, as aforesaid, and have been and are unfair methods of competition within the meaning and intent of Section 5 of an Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission on May 28, 1936 issued and served its complaint in this proceeding upon said respondent, Cushing Refining & Gasoline Co., charging it with the use of unfair methods of competition in commerce in violation of the provisions of said act. On June 19, 1936, the respondent filed its answer in this proceeding. Thereafter, a stipulation was entered into whereby it was stipulated and agreed that a statement of facts signed and executed by the respondent's counsel, John B. Dudley, and W. T. Kelley, Chief

Findings

24 F. T. C.

Counsel for the Federal Trade Commission, subject to the approval of the Commission, may be taken as the facts in this proceeding and in lieu of testimony in support of the charges stated in the complaint, or in opposition thereto, and that the said Commission may proceed upon said statement of facts to make its report, stating its findings as to the facts and its conclusion based thereon and enter its order disposing of the proceeding without the presentation of argument or the filing of briefs. Thereafter this proceeding regularly came on for final hearing before the Commission on said complaint, answer and stipulation, said stipulation having been approved and accepted, and the Commission having duly considered the same and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. The respondent, Cushing Refining & Gasoline Company, is a corporation organized, existing, and doing business pursuant to the laws of the State of Oklahoma, having its office and principal place of business in Cushing, Okla., with a branch office at Minneapolis, Minn., and refineries at Cushing and Blackwell, Okla. It is now, and for more than one year last past has been engaged in the business of refining crude petroleum and manufacturing therefrom gasoline, and in the sale of said gasoline in commerce between and among the various States of the United States and in the District of Columbia. It ships said products, when sold, to the purchasers thereof, some located in the State of Oklahoma, and others located in various other States of the United States, or in States other than the State from which shipment is made, and in the District of Columbia. There is now, and has been for more than one year last past, a constant current of trade and commerce by respondent in its aforesaid products.

PAR. 2. Certain other corporations, firms, partnerships, and individuals have been, and are now, likewise engaged in the manufacture and sale of gasoline in commerce, as described in paragraph 1 hereof. Some of said gasoline is refined by what is known in the trade as the "skimming" or "distillation" process, and is called "straight run" or "ordinary" gasoline. Other types of said gasoline are refined by the "cracking" method, a new process of refining gasoline which, when applied to the proper grade of crude petroleum may be made to extract a higher grade of gasoline than is usually obtained by the "skimming" or "distillation" method. Most refineries use both

the "cracking" and "distillation" process as the "cracking" process will extract additional gasoline from crude petroleum previously treated by other processes. Others are engaged in manufacturing a certain type of gasoline known as "ETHYL" gasoline, which consists of gasoline made by any of the above methods, to which a chemical known as tetraethyl lead or "ETHYL" has been added for the purpose of eliminating knock or detonation which is encountered in high compression motors when driven by the usual straight run gasoline. Some of the gasoline manufactured by the "cracking" method is sufficiently high in grade without the addition of tetraethyl lead to accomplish a result similar to that produced by "ETHYL" gasoline. The quality or grade of gasoline in this respect is susceptible of measurement and determination. This standard of measurement is expressed in terms of octane value, and the gasoline having the highest octane rating is considered by the trade, and the purchasing public, to be the best and commands a higher price or premium accordingly. Tetraethyl lead, or "ETHYL" fluid, unadulterated, is poisonous, but when used in the very limited quantity necessary or permitted in gasoline, as sold to the public for motor fuel, is entirely safe and no more poisonous or dangerous than any other motor gasoline. Tetraethyl lead or "ETHYL" has been added, to some extent, to most of the gasoline now sold in the United States.

Respondent, prior to the filing of the complaint in this proceeding, never manufactured or sold gasoline to which tetraethyl lead or "ETHYL" had been added, but during the summer of 1936, and after the filing of the complaint herein, commenced to manufacture gasoline so treated with tetraethyl lead, which it now sells to dealers and consumers.

PAR. 3. In the course of its business, respondent is now, and has been, in substantial competition in commerce between and among the various States of the United States and in the District of Columbia, with other corporations, and with partnerships and individuals engaged in manufacturing, distributing, and selling gasoline produced by any of the methods hereinbefore named. All of the manufacturers and sellers of the several types of gasoline above described are and have been in competition in commerce as hereinabove set out, between and among themselves, as to each and all of the said types of gasoline.

PAR. 4. In such competition between the sellers of ETHYL gasoline and the sellers of gasoline to which no tetraethyl lead or ETHYL has been added, one of the controlling influences on the purchasing public, is the proper opinion as to the comparative value, desirability, effectiveness and safety of ETHYL gasoline, as compared with either

Findings

24 F. T. C.

"ordinary," "straight run" gasoline or "cracked" gasoline to none of which ETHYL has been added.

So-called ETHYL gasoline has been widely used in the United States for the last ten years, and its desirability and effectiveness in increasing power and eliminating "knock" is well known and understood by the purchasing public, and it has been found to be entirely safe when used as a motor fuel, the use for which it is intended. It is no more poisonous or dangerous than any other form of gasoline used for that purpose. Notices are placed on all gasoline pumps from which ETHYL gasoline is sold, in order that purchasers may be warned not to use it for cleaning or other purposes.

The respondent, as a manufacturer and seller of gasoline which, prior to the filing of the complaint in this proceeding, did not contain tetraethyl lead or ETHYL, was interested and engaged in presenting to the purchasing public all available reasons or arguments against or tending to lessen the desirability, effectiveness and safety of gasoline treated with Tetraethyl lead or ETHYL.

The use of the said ETHYL gasoline destroys to the extent of the use thereof, the demand for or sale of "straight run" and "cracked" gasoline, such as is manufactured and sold by the respondent, and the respondent prior to filing the complaint in this proceeding, was therefore, interested in an attempt to create public sentiment adverse to the use of gasoline containing tetraethyl lead or ETHYL in order that a greater demand might exist for gasoline not so treated.

PAR. 5. Respondent distributes its said product to the ultimate purchasers or consumers thereof, largely through wholesale dealers, jobbers, and retail merchants. In aid of its sales to such dealers, or ultimate dealers, for ultimate use by the consuming public, and for the purpose of creating a demand for its own products, in preference to gasoline containing chemicals such as tetraethyl or ETHYL, which, prior to filing the complaint in this proceeding, it did not manufacture or sell, respondent caused advertisements to be issued and published in newspapers, magazines, and other publications of wide circulation among the general public of the United States. These advertisements contain statements, among others, such as the following:

WHAT'S CUSHING GOT THAT'S SO NEW

Cushing's plant is new—it's 1935 from stem to stern. We thought it about time that today's motor fuels caught up with today's motor cars. We never believed gasoline had to be doped—and we're anti-narcotic now, so rather than sell you an artificially pep'ed-up product we've built a plant that's turning out an un-doped high octane gasoline that's a world beater—

CUSHING'S A NEW AND SAFER ANTI-KNOCK MOTOR FUEL! NOT JUST ANOTHER GASOLINE

There's been plenty of new gasoline, and CUSHING'S not making claims we can't deliver—so we've guaranteed our new high octane anti-knock motor fuel, because we know it's pure undoped power. We could have offered you an artificially pep'ed-up product—instead we have spent thousands of dollars on a new plant to bring you a gasoline that's as new as today's cars. It stands on its own merits and needs no dangerous chemicals—hence you can offer it to your customers without doubt or fear.

NEW! WE'LL SAY CUSHING'S GASOLINE IS AS NEW AS TODAY'S CARS.

WHAT DO YOU MEAN ANTI-KNOCK! WITH CUSHING'S NEW GASOLINE WE NOT ONLY MEAN IT—WE GUARANTEE IT!

Cushing's new gasoline needs no BEWARE signs. It's safe.

You don't want to endanger the life of your customers—you DO when you use a poisonously doped gasoline, but you DON'T when you offer them Cushing's.

When we saw the handwriting on the wall we might have gone out of the room and mixed up a doped-up gasoline—but we could have hardly put the name CUSHING on such a product, so we have spent thousands of dollars on a new plant to bring you a high octane and anti-knock motor fuel so good we guarantee it.

But that's the only way we know how to give you a gasoline of real performance—not artificially doped-up.

It stands on its own merits, and needs no dangerous chemicals.

By said means, respondent has made exaggerated statements to the general public, for the purpose of promoting the sale of its own products by lessening the consumption by the purchasing public of gasoline containing tetraethyl lead or ETHYL, which it did not manufacture, or sell prior to the summer of 1936.

PAR. 6. The statements above set forth, together with others of similar import and effect, serve to unfairly discourage the purchase of gasoline treated with tetraethyl lead or ETHYL fluid, by leading the public to believe:

1. That gasoline other than respondent's is not safe;
2. That gasoline which contains tetraethyl lead or ETHYL is not safe;
3. That gasoline to which a chemical has been added for the purpose of eliminating "knock" is dangerous to the life or health of the purchaser or user thereof;
4. That gasoline to which chemicals have been added is poisonous, but that the gasoline of respondent is not;
5. That gasoline to which a chemical has been added to increase its power and to eliminate "knock" is doped, and therefore unsafe for use by the consuming public, whereas the gasoline of the respondent is superior to chemically treated gasoline;
6. That gasoline treated with tetraethyl lead or ETHYL, which is the only or usual chemical used commercially for admixture with gas-

Findings

24 F. T. C.

oline to eliminate "knock" and to increase its power, is a dangerous dope, a narcotic, and injurious to the life or health of purchasers, users and the general public;

7. That gasoline made by the "cracking" process is superior to gasoline to which ETHYL or tetraethyl lead has been added.

PAR. 7. The treatment of "straight run" or "ordinary" gasoline, as manufactured commercially either by the distillation or skimming method, or by the cracking method, by adding thereto tetraethyl lead or ETHYL, results in the creation of a high grade anti-knock gasoline, commonly known as ETHYL gasoline, which functions in an exceedingly high and efficient manner as fuel for gasoline motors. Said ETHYL gasoline is entirely safe to the health of persons operating said motors, and to the public in general, when used as a motor fuel, and is not narcotic in its effect, or a poisonous dope, or dangerous to the life or health of a customer, purchaser, user, or the general public.

Respondent's refineries at Blackwell and Cushing, Okla., have a daily capacity of approximately 6,200 barrels of crude oil per day by the "distillation" process. In addition to this, its plant at Cushing has a daily capacity of 2,000 barrels per day, produced by the "cracking" process. Respondent's production capacity for "cracked" gasoline is, therefore, approximately one-third of its capacity for producing "straight run" gasoline by the distillation process.

Only a portion, therefore, of the gasoline produced by the respondent is made by the cracking process, or by its new plant or refinery, or by a new addition to an old refinery, the balance and greater part, being made by straight distillation process, one of the oldest processes known in the petroleum refining industry.

PAR. 8. The aforesaid representation, made by respondent in its advertising, as above described, have the tendency to mislead, and have misled retailers, and other dealers in gasoline and a substantial portion of the purchasing public, into the erroneous beliefs that said statements and representations, or any of them, as set forth in paragraph 5 above, are true and that gasoline treated with tetraethyl lead or other chemicals to increase its power or to eliminate "knock" is undesirable, inefficient, doped, harmful, poisonous, narcotic in its effect, and dangerous to the health or life of customers when used for the purpose for which gasoline motor fuel is intended; and that all of the gasoline manufactured by respondent is high test, or high octane gasoline obtained by a new "cracking" process which is safe and is superior to ETHYL gasoline or gasoline to which tetraethyl lead has been added, or to straight run gasoline.

Further, said representations have the tendency to induce the public to purchase gasoline not so chemically treated, because of such erroneous beliefs, brought about as hereinabove set out, and to unfairly divert trade to the sellers of straight or ordinary gasoline and to the sellers of "cracked" gasoline, including the respondent, and its customers, from sellers of gasoline treated with tetraethyl lead or ETHYL. As a result thereof, substantial injury has been done by respondent to competition in commerce among and between the various States of the United States and in the District of Columbia.

PAR. 9. Gasoline of sundry competitors of respondents likewise engaged in commerce as herein set out who use both the "distillation" and "cracking" processes in the manufacture of their products, has been sold and distributed to the consuming public in the various States of the United States and in the District of Columbia in competition with respondent's gasoline but without such false and fictitious representations as to the "newness" of their product and without representing that all of their gasoline is "high test" or "high octane" or superior to all other gasoline, when such is not the case, and without unfairly disparaging the products of manufacturers of gasoline who add tetraethyl lead or ETHYL to their product for the purpose of eliminating "knock" and increasing its power.

CONCLUSION

The aforesaid acts and practices of the respondent, Cushing Refining & Gasoline Company, are to the prejudice of the public and of respondent's competitors, and constitute unfair methods of competition in commerce, within the intent and meaning of Section 5 of an Act of Congress, approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission, the answer of respondent, and the agreed stipulation of facts entered into between the respondent herein, Cushing Refining & Gasoline Co., by its attorney of record, and W. T. Kelley, Chief Counsel for the Commission, which provides, among other things that without further evidence or other intervening procedure, the Commission may issue and serve upon the respondent herein findings as to the facts and

Order

24 F. T. C.

conclusion based thereon and an order disposing of the proceeding, and the Commission having made its findings as to the facts and conclusion that said respondent has violated the provisions of an act of Congress, approved September 26, 1914, entitled, "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

It is ordered, That the respondent, Cushing Refining & Gasoline Co., its officers, representatives, agents, and employees, in connection with the offering for sale, sale and distribution of its gasoline in interstate commerce or in the District of Columbia, do forthwith cease and desist from representing:

1. That gasoline to which tetraethyl lead, or ETHYL fluid has been added for the purpose of processing said gasoline, is a narcotic or has narcotic effects, is "doped up" or is poisonous, unsafe or dangerous to the life or health of persons using the same for motor fuel;

2. Using any language calculated to intimate or suggest that gasoline treated with tetraethyl lead or ETHYL fluid is unsafe for sale to or use by the public as a motor fuel, in the manner prescribed by law;

3. That all of the gasoline produced by it is manufactured by the "cracking" process;

4. That all of the gasoline produced by it is made by a new process and consists of what is commonly known as "high test," "high octane" or "anti knock" gasoline and that all of its gasoline is superior as motor fuel to that type of gasoline commonly known as "ETHYL" gasoline;

5. That gasoline made by the "cracking" process is superior as a motor fuel to gasoline of equal octane value to which tetraethyl lead or "ETHYL" has been added.

It is hereby further ordered, That the respondent Cushing Refining & Gasoline Co., a corporation, shall within 60 days from the date of the serving upon it of this order, file with the Commission, its report in writing stating the manner and form in which it shall have complied with this order.

Complaint

IN THE MATTER OF
JOSEPH LEWIN, TRADING AS LEEV-NO-RING CHEMICAL
COMPANYCOMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914*Docket 2924. Complaint, Sept. 17, 1936—Decision, Feb. 17, 1937*

Where an individual, engaged in preparation of cleaning fluid, and offer and sale thereof—

Caused his trade name, including words "Leev-No-Ring" to appear on labels affixed to containers of his product, and featured same in circulars, folders, and other forms of printed matter published and circulated by him among the general public, and represented that his said fluids could be used safely and without injury to the most delicate fabrics or materials, and would remove all grease spots instantly and without injury to such fabrics, and would not in any instance leave a ring, facts being his said product, used on fabrics dyed with non-fast or fugitive dyes, did affect colors thereof by causing same to bleed or run, and in case of certain fabrics did leave appearance of a mark or ring thereon;

With capacity and tendency to mislead and deceive purchasers and prospective purchasers thereof into belief that said fluids could be used safely and without injury and with results claimed therefor, as above set forth, and to induce purchase of his said products in such erroneous beliefs, and with effect of thereby diverting trade to him from competitors, including those who, as manufacturers, compounders, sellers, and distributors of like and similar products, truthfully advertise and represent the nature, merit, and value of their respective products, or do not advertise and represent that the same have merit or value which they do not possess; to the substantial injury of competition in commerce:

Held, That such acts and practices were to the prejudice of the public and competitors, and constituted unfair methods of competition.

Before *Mr. W. W. Sheppard*, trial examiner.

Mr. Joseph C. Fehr for the Commission.

Mr. Clyde L. Rogers, of Washington, D. C. and *Mr. David S. Andron*, of New York City, for respondent.

COMPLAINT

Pursuant to the provisions of an Act of Congress approved September 26, 1914, entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," the Federal Trade Commission having reason to believe that Joseph Lewin has been and is using unfair methods of competition in commerce as "commerce" is defined in said act, and it appearing to said Commission that a proceeding by it in respect thereof would be in the public